IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 32652 OF 2006(K)

PETITIONER:

P.S.BABU, S/O. SEBASTIAN,
PUTHENVEETTIL HOUSE, PARAVATTANI,
OLLUKKARA VILLAGE, THRISSUR.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS:
---

1. THE ASSISTANT ENGINEER,
KSEB, ELECTRICITY SECTION, MANNUTHY P.O.,
OLLUKKARA, THRISSUR.

2. THE EXECUTIVE ENGINEER,
ELECTRICAL DIVISION (EAST), KSEB,
THRISSUR-680 004.

3. KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVAN, THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY.

S.C. FOR K.S.E.B. SRI. JOSE J. MATHEIKEL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/02/2007, ALONG WITH W.P.(C) 5678/06 & R.P. 129/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) 32652/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF THE MAHAZAR DATED 18.6.1999 PREPARED BY THE THEN ASSISTANT ENGINEER.
EXT.P2	TRUE COPY OF THE BILL DATED 3.7.99 DEMANDING AN AMOUNT OF RS. 5,53,580/- ISSUED BY THE SENIOR SUPERINTENDENT, K.S.E.B.
EXT.P3	TRUE COPY OF THE APPEAL MEMORANDUM DATED 9.9.2-03 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
EXT.P4	TRUE COPY OF THE RECOVERY NOTICE DATED 23.11.2004 ALONG WITH A CALCULATION STATEMENT DEMANDING A WHOPPING SUM OF RS. 12,79.168.
EXT.P5	TRUE COPY OF THE B.O. (F.B.) NO. 1292/2002/PLG. COM. 4206/01) DATED 18.9.2002 ISSUED BY THE 3RD RESPONDENT.
EXT.P6	TRUE COPY OF THE NO. GB 1/CASES/MTY/06-07/3484/DT.17.10.2006 ISSUED BY THE 2ND RESPONDENT.
EXT.P7	TRUE COPY OF THE NOTICE ALONG WITH THE COVERING LETTER DATED 27.11.2006 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN & C.N. RAMACHANDRAN NAIR, JJ.

W.P.C. NOS. 32652/2006, 5678/2007 & R.P. 129/2007

DATED THIS, THE 28TH DAY OF FEBRUARY, 2007.

J U D G M E N T

Ramachandran Nair, J.

Since the issue arising in the Review Petition and connected writ petitions are related, we heard counsel appearing for all parties and we proceed to dispose of all these matters by this common judgment.

2. While the petitioner in W.P.(C) 32652/2006 is a builder who has taken temporary electricity connection for construction of five houses, the other two petitioners in the review petition and in W.P.(C) 5678/2007 are purchasers of the houses from the defaulter namely, the petitioner in W.P. (C) 32652/2006. Even though charges were paid for the temporary connection, during inspection by the Kerala State Electricity Board, held on 18.6.1999, it was found that as against the connected load of 4 KWs for which connection was given, the total load was 45 KWs. Besides the unauthorized load, it was noticed that the builder has given connection to all the five houses without any authority from the K.S.E.B. Even though

the consumer approached the civil court, the matter was left to be decided in appeal. Consequently, the appeal against the penal bill was contested before the Executive Engineer who has confirmed the demand by Ext.P6 produced in W.P.(C) 32652/2006. The counsel for the petitioners contended that Clause 42(d) of the Conditions of Supply of Electrical Energy is not applicable because the K.S.E.B. has not established that the load is in excess of the contracted one. The counsel for the Board, on the other hand, contended that the load found over the connected load is unauthorized load which is as much as 41 KWs and therefore, Clause 42(d) of the Conditions of Supply of Electrical Energy is squarely applicable.

3. This Court has in the decision in W.A. 1231/2003 held that unauthorized load found in the premises of the consumer can be subjected to penal charges. On going through the penal bill and Ext.P6 order in appeal, we find the demand under the penal bill is raised in terms of Clause 42(d) of the Conditions of Supply of Electrical Energy, which provision is applicable to the case in hand. Therefore, the demand under the penal bill is sustained. However, we find that the protracted litigation in the matter led to delay in recovery and therefore, interest has accrued at exorbitant rate of 24% per annum, which is higher than the disputed bill. The total liability as per Ext.P7 produced in W.P.(C) 32652/2006 is Rs. 15,63,762/- out of which Rs. 9,95,505/- accounts for interest. Since the bill raised is essentially penal and on technical grounds, the case falls for sympathetic

consideration in favour of the petitioners. Accordingly, we fix the total liability at Rs. 6,00,000/- (six lakhs) with a direction to the defaulter to pay the same before 31.3.2007 without any future interest. In other words, if the above amount is paid on or before 31.3.2007, the liability of the petitioner in W.P.(C) 32652/2006 will stand settled and other petitioners will consequently be entitled for regularizing the connections given to them.

Consequently, there will be a direction to the Kerala State Electricity Board to regularize the connection given to all the individual house owners and not to disconnect their supply, if liability is settled as above. However, we make it clear that the judgment in the writ appeal does not call for any review and the review petition will stand dismissed as there is no ground for review. If payment is not made before 31.3.2007, the reduction and waiver granted by us will stand automatically vacated and in that event all consequences will follow such as recovery of full amount and disconnection in defaulted premises.

P.R. RAMAN,
(JUDGE)

C.N. RAMACHANDRAN NAIR,
(JUDGE)

knc/-